National Energy Board
Office national de l'énergie

Reasons for Decision

TransCanada PipeLines Limited

RH-1-99

April 2000

Tariff

National Energy Board

Reasons for Decision

In the Matter of

TransCanada PipeLines Limited

Interruptible Transportation and Short Term Firm Transportation Tariff Amendments

RH-1-99

April 2000

Cat. No. NE22-1/2000-4E
ISBN 0-662-28709-6

This document is published separately in both official languages.

Copies are available on request from:
The Publications Office
National Energy Board
444 Seventh Avenue S.W.
Calgary, Alberta, T2P 0X8
E-Mail: orders@neb.gc.ca
Fax: (403) 292-5503
Phone: (403) 299-3562
1-800-899-1265

For pick-up at the NEB office:
Library
Ground Floor

Printed in Canada

N° de cat. NE22-1/200-4F
ISBN 0-662-84480-7

Ce document est publié séparément dans les deux langues officielles.

Exemplaires disponibles sur demande auprès du:
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Office national de l'énergie
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Imprimé au Canada

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IN THE MATTER OF the National Energy Board Act and the Regulations made thereunder; and

IN THE MATTER OF an application dated 29 October 1999 by TransCanada PipeLines Limited for amendments to TransCanada's Mainline Tariff regarding Interruptible and Short Term Firm Transportation Toll Schedules; and

IN THE MATTER OF Hearing Order RH-1-99;

HEARD in Calgary, Alberta on 18, 19, 20, 21, 24, 25, 26, 27, 31 January 2000 and 1 February 2000;

BEFORE:

R.J. Harrision	Presiding Member
J.S. Bulger	Member
C.L. Dybwad	Member

Appearances		**Witnesses**
P. Jeffrey J.R. Nichols	TransCanada PipeLines Limited	S. Emond M. Stauft
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B. Webb L.A. Alexander	Iroquois Gas Transmission System, L.P.	
B. Woods	Mobil Oil Canada	
E. Sampson	Ocean Energy Resources Inc.	
A. Reid	PanCanadian Petroleum Limited	
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A. Hollingworth, Q.C.	Portland Natural Gas Transmission System	
M. Voinorosky	ProGas Limited	
D. Davies	Renaissance Energy Ltd.	
C. Kemm Yates	Selkirk Cogen Partners L.P.	
M. Imbleau	Société en Commandite Gaz Métropolitain	L. Mercier
M. Samuel	TransCanada Gas Services	W.D. O'Connor R.W. Pirt P.F. Ewing
G. Cameron	Union Gas Limited	M. Stedman
C. Kemm Yates	USGen New England Inc.	
E.R. Bourgeault	U.S. Northeast Group (The)	
G. Nettleton	Vector Pipeline Limited Partnership	
J. Lutes	Westcoast Energy Inc.	
J.C. Turchin	Minister of Energy, Science and Technology for Ontario	
J. Brisson	la Procureure générale du Québec	
C.J.C. Page	Alberta Department of Resource Development	
P.W. Noonan G. Grondin	National Energy Board	

Abbreviations

Act	*National Energy Board Act*
Alberta	Alberta Department of Resource Development
Alliance	Alliance Pipeline Ltd.
AOI	Authorized Overrun Interruptible (original IT service)
Bcfd	billion cubic feet per day
Board or the NEB	National Energy Board
CAPP	Canadian Association of Petroleum Producers
CD	Contract Demand
Centra Gas	Centra Gas Manitoba Inc.
DEML	Direct Energy Marketing Limited
Enbridge Consumers	Consumers' Gas Company Ltd. (The); (Enbridge Consumers Gas)
FERC	Federal Energy Regulatory Commission (U.S.)
FS	Firm Service (FT predecessor)
FST	Firm Service Tendered
FT	Firm Transportation
GJ	gigajoules
GLGT	Great Lakes Gas Transmission Ltd.
IGUA	Industrial Gas Users Association
IPPs	Independent Power Producers (Selkirk Cogen Partners L.P., Pittsfield Generating Company, L.P. and USGen New England, Inc.)
IS	Interruptible Service
IT	Interruptible Transportation
LDCs	Local Distribution Companies
MHPS	Multiple Handshake/Pooling Service
MMcfd	millon cubic feet per day
NGTL	Nova Gas Transmission Ltd.
Ontario	Minister of Energy, Science and Technology for Ontario
PALS	Parking and Loan Service

Pan-Alberta	Pan-Alberta Gas Ltd.
Quebec	La Procureure générale du Québec
Renaissance	Renaissance Energy Ltd.
SCGM	Société en Commandite Gaz Métropolitain
STS	Storage Transportation Service
STFT	Short Term Firm Transportation
TCGS	TransCanada Gas Services, a Division of TransCanada Energy Ltd.
TJ/d	terajoules/day
TransCanada or the Applicant	TransCanada PipeLines Limited
TTF	Tolls Task Force
Union	Union Gas Limited
Vector	Vector Pipeline Limited Partnership
Viking	Viking Gas Transmission Co.
WCSB	Western Canada Sedimentary Basin

Glossary of Terms

AECO	A North American gas marketing centre located in Alberta (i.e., AECO C Hub).
Allocative Efficiency	The ability of a market to allocate goods or services to those who value them most.
Assignment	A transfer of contractual firm transportation rights temporarily or permanently to another party.
Basis Differential	The difference between the cash price for gas at a specific point compared to the cash price for gas at the Henry Hub. The price difference between points that do not include the Henry Hub is referred to as the basis spread.
Central Section	The portion of the TransCanada system extending from Station 41 near Winnipeg, Manitoba to Station 130 near Toronto, Ontario.
Commodity Toll	A monthly charge applied to volumes actually delivered in order to recover the variable costs of a pipeline.
Contract Expiry Profile	A summary outlining the quantity of capacity subject to renewal over a period of years.
Contract Year	The gas contract year commences 1 November and ends 31 October.
Cost of Service	The annual owning and operating costs of a pipeline system (i.e., the total cost of providing service, including operating and maintenance expenses, depreciation, amortization, taxes and return on rate base).
Cost Causation Principle	A toll design principle which states that the shippers who cause costs should be the shippers who pay for those costs.
Curtailment	In the event that a pipeline is unable to deliver its contracted quantities, a pipeline will withhold certain deliveries subject to the order of priority defined in its Tariff.
Delivered Service	In this proceeding, this term denotes a contractual arrangement under which a buyer contracts for delivery of gas to a specified delivery point in the Eastern Zone.
Demand Toll	A monthly charge which normally covers the fixed costs of a pipeline. The demand charge is based on the daily contracted volume and is payable regardless of volumes transported.
Discounting	The offering of capacity at a price which is below the approved service toll.
Discretion (pricing)	The ability to set prices, or minimum bid price.
Discretionary Services	All services except FT, FST and Storage Transportation Service (STS).

Displacement	a) In pipeline transportation, the substitution of a source of natural gas at one point for another source of natural gas at another point. Through displacement, natural gas can be transported by backhaul or exchange; or b) In natural gas marketing, the substitution of natural gas from one supplier of a customer with natural gas from a competing supplier.
East-West Differential	The East-West differential represents the potential marginal cost of delivering gas beyond the "West" to the "East". Bids to the west (deliveries up to, and including the Saskatchewan, Manitoba Zone and the Western Zone) are evaluated using the East-West Differential. When TransCanada is assigning capacity, the East-West Differential is added to the western bids for evaluation purposes in order that bids can be considered on an equal basis.
Eastern Zone	One of TransCanada's five toll zones. It includes all delivery points in the Central Delivery Area, the Southwestern Delivery Area and the Eastern Delivery Area.
Excess Capacity (market)	Physical capacity that will not "clear the market" (i.e., will not be sold at the lowest biddable price).
Excess Capacity (physical)	Available throughput capacity not otherwise contracted for.
Firm Transportation (FT) Toll	A two-part toll consisting of a Demand and Commodity Toll.
Fixed Costs	Costs that tend to remain constant and do not vary with throughput.
Floating Floor	A floor for IT minimum bids which would be recalculated, on a forward basis, each month based on a specific formula.
Fuel Curves	A graphical depiction of the variation of average daily fuel requirements with average daily deliveries.
Fuel Ratio	The ratio of pipeline fuel divided by total quantity delivered, generally expressed as a percentage.
Gas Day	The standard gas day begins and ends at 9:00 a.m. Central Time.
Hub	A pipeline interchange where multiple pipelines interconnect and form a market centre.
Incentive Cost Recovery and Revenue Sharing Agreement	A negotiated settlement between TransCanada and its stakeholders which provided the framework for determining TransCanada's Annual Revenue Requirement (i.e., Cost of Service) for the period 1996-1999.
Incremental Variable Cost	The variable cost of transporting an additional unit of throughput.

IT Floor Price (current)	The 200% load factor daily equivalent of the FT toll (i.e., 50% of the FT toll).
LDCs	In this proceeding, Enbridge Consumers, SCGM and Union are collectively referred to as the LDCs.
Load Factor	The ratio of the average requirement to the maximum requirement for the same period, usually expressed over a year and as a percentage.
Load-factor Utilization	System throughput divided by 100% pipeline design capacity.
Long-haul Capacity	Service with a receipt point in Alberta or Saskatchewan and a delivery point at or east of Emerson, Manitoba.
Long-term Services	Any transportation service contracted for a period greater than or equal to one year. For pipeline expansions, long-term relates to a minimum of 10 years.
Marginal Capacity	Available or unassigned capacity which includes contracted capacity that is not being utilized by firm shippers, capacity that is available as a result of ambient conditions or operational factors, and any released capacity.
Marginal Fuel Rate	The amount of gas required as pipeline fuel to ship an incremental volume of gas.
Marginal Cost	The increase in total costs brought about by a one-unit increase in throughput.
Market Power	The ability of a company to influence the market price of a good or service.
Market Value	The price that a market participant is willing to pay to contract for pipeline capacity.
Market Price	a) The equilibrium price where supply meets demand; or b) The lowest price offered by the market for a biddable service and accepted by the pipeline.
Merger Costs and Benefits Agreement	A negotiated settlement between TransCanada's Mainline, TransCanada's Alberta System (NGTL), TransCanada's B.C. System (ANG) and its stakeholders for the period 1998-2002. The stated purpose of this Agreement is to provide an incentive to maximize the sustainable benefits achievable as a result of the merger of TransCanada and NOVA Corporation.
Monopoly	A state of exclusive or near-exclusive ownership or control of a commodity, service or facility.
Multiple Handshake/Pooling Service (MHPS)	This service allows shippers to transfer the title of gas between two parties, providing the ability to match supplies with markets at a single point. Pooling allows shippers to aggregate transportation contracts at MHPS Points, while multiple handshakes, or title transfers, enable shippers and marketers/aggregators to buy, sell or trade gas at the various MHPS Points.

Nomination	A request from shipper for daily delivery of gas, pursuant to a contract.
Open Season	A period of time in which potential shippers can bid for pipeline service.
Open Access Principle	The application of a gas pipeline's Tariff to ensure equal and non-discriminatory access for all shippers.
Parking and Loans Service (PALS)	This service allows shippers to either store or borrow gas. Parking transactions involve the pipeline receiving gas from a customer for repayment in kind to the same customer at a later date. The gas is added to the system linepack inventory and removed when it is repaid. Loan transactions involve the removal of gas from linepack with repayment in kind at a later date. Both transactions require injection and withdrawal at the same point.
Point-to-Point Toll	A tolling methodology under which tolls are determined based on the distance between the receipt and delivery point. All export tolls are calculated on a point-to-point basis.
Posting	Pipelines offer available interruptible and short-term firm capacity by posting the information on their website.
Primary Market	The market in which shippers contract directly with pipelines for transportation services, normally at regulated tolls.
Renewal Rights	A contractual right to extend the existing term of an FT or an STS contract (subject to notice provisions and minimum contract length).
Reserve Price	A minimum bid price or floor price.
Reserve Factor	A decimal fraction which, when multiplied by the applicable 100% load factor daily equivalent of the FT toll, represents the reserve price that TransCanada would be prepared to accept for IT and STFT service.
Secondary Market	The market in which shippers contract with parties other than pipelines for transportation services or delivered gas services. This market is unregulated.
Segment (of pipeline)	The various combinations of receipt and delivery point/area by which TransCanada provides transportation or posts available capacity.
Short-haul Capacity	Generally, service within one toll zone is considered short haul.
Short-term Services	Any transportation service which has a duration of less than one year.
STFT Floor Price (current)	The 100% load factor daily equivalent of the FT toll (i.e., 100% of the FT toll).
Summer Period	The period between 1 April to 31 October within the gas contract year.
Tariff	The terms and conditions under which the services of a pipeline are offered or provided, including the tolls, the rules and regulations, and the practices relating to specific services.

Toll (or rate)	The total price charged by a pipeline company for the use of its facilities.
Toll Zone	For the purposes of setting tolls, domestic FT shippers pay tolls according to the toll zone to which gas deliveries are made. There are currently five domestic toll zones. All deliveries within the same toll zone pay the same toll.
Toll Schedule	The terms and provisions for a specific transportation service (e.g., FT).
Variable Cost	Costs that vary with throughput, such as compressor-fuel costs for gas.
Western Section	The portion of TransCanada's system which extends from Empress, Alberta to Station 41 near Winnipeg, Manitoba.
Winter Period	The period between 1 November to 31 March within the gas contract year.

Chapter 1

Introduction

1.1 Background

TransCanada PipeLines Limited (TransCanada or the Applicant) has traditionally constructed facilities only to accommodate long-term requirements. As such, its facilities have been underpinned by long-term contracts for firm service. For the most part, the facilities have been utilized at a high load factor. Any available ambient-related capacity or contracted but unused firm capacity has been considered to be marginal capacity. Services that utilized this capacity have been offered on a short-term basis only.

TransCanada currently offers two such short-term services, namely Interruptible Transportation (IT) and Short Term Firm Transportation (STFT). IT service is provided on a daily basis subject to the availability of capacity. STFT service is offered for terms ranging from 14 days to nine months, again subject to the availability of capacity. Both services are offered through an auction process, with set minimum floor prices and a bidding mechanism that allocates the capacity to the highest bidder.

Under TransCanada's currently-approved Transportation Tariff (Tariff), the floor price for IT is set at 50% of the Firm Transportation (FT) toll. This floor price represents a proxy for the variable cost of providing the service, as agreed to by TransCanada and its Tolls Task Force (TTF) members in 1995. There is no ceiling price for IT bids.

The floor price for STFT service is set at 100% of the FT toll. The ceiling for STFT service is 400% of the FT toll to Philipsburg, Quebec. In addition to the applicable toll, each IT and STFT shipper provides fuel based on the average fuel ratio for the applicable path.

1.2 Application

By application dated 29 October 1999, TransCanada applied to the National Energy Board (the Board), pursuant to Part IV of the *National Energy Board Act* (the Act), for amendments to its Tariff regarding the IT and STFT Toll Schedules.

The proposed amendments to the IT and STFT Toll Schedules would allow TransCanada discretion to vary the floor prices for these short-term services in response to changing market conditions, while preserving the existing bidding mechanisms for IT and STFT services. Bids for IT capacity would continue to be unconstrained by a ceiling, while the ceiling for STFT capacity would remain at 400% of the FT toll to Philipsburg. The principal change proposed is the granting of discretion to TransCanada to vary the floor price for both IT and STFT.

TransCanada sought the discretion to establish a Reserve Price for IT and STFT services, below which it would not accept bids. The Reserve Price would be determined by multiplying the applicable FT toll by a Reserve Factor that would apply uniformly across the system. The minimum Reserve Price for both IT and STFT would be 65% of the FT toll, which TransCanada adjusted to 55% during the course of the

proceeding. The maximum Reserve Price for both services would be 125% of the FT toll during the winter period and 100% of the FT toll during the Summer Period.

Under its proposal, prior to initiating a bidding process for IT through its electronic bulletin board, TransCanada would first advise prospective shippers of the amounts of capacity that would be available on certain segments of the system and the minimum bid price for the available capacity. For IT service, the available capacity and applicable Reserve Price would be posted daily prior to the earliest nomination call.[1] Similarly, all relevant STFT information would be posted in advance of any scheduled STFT bidding process. For the purpose of evaluating bids, the East-West differential would be added to bids for capacity on the western part of the system, to enable consideration of all bids on an equal basis.

1.3 RH-1-99 Proceeding

As part of its initial filing on 29 October 1999, TransCanada requested that the Board approve immediate interim implementation of the proposed amendments to the IT and STFT Toll Schedules pending final disposition of the application.

Given the absence of a TTF Resolution on this proposal, the Board sought parties' comments. On 12 November 1999, the Board denied TransCanada's request for immediate interim relief and indicated that it would move expeditiously to decide on a procedure to consider TransCanada's application.

On 18 November 1999, the Board issued Hearing Order RH-1-99 setting out the Directions on Procedure for the public hearing to be conducted in respect of TransCanada's application. TransCanada's application was considered by the Board at an oral public hearing, which commenced on 18 January 2000 and concluded on 1 February 2000.

1.4 Chronology of Board Decisions relating to IT and STFT

Interruptible Transportation Service

RH-1-72 The Board indicated that, although capacity was not built for Authorized Overrun Interruptible (AOI, the original term used for IT) deliveries, the price level should be structured so that these sales, when available, would contribute toward meeting the fixed costs of the system and, at the same time, be commensurate with the priority of service

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1 There are four nomination cycles each day, two cycles for service effective 8:00 hours Mountain Time on the following day, and two intra-day cycles for service commencing at 16:00 hours Mountain Time and 20:00 hours Mountain Time respectively on the same day.

For service effective 8:00 hours Mountain Time the next day, nominations must be received on or before 11:00 hours Mountain Time and again by 17:00 hours Mountain Time. For intra-day service, nominations must be received on or before 9:00 hours Mountain Time and again by 17:00 hours Mountain Time respectively.

rendered. Accordingly, the Board decided that the rate for AOI deliveries should be 10% below the CD (Contract Demand)-90 rate.[2]

RH-2-75 TransCanada submitted that the approved method of fixing the AOI rate at 10% below the CD-90 rate did not enable it to recover completely those variable costs associated with AOI service. The Board accepted TransCanada's proposal and accordingly set the AOI rates at a level equal to the CD-100 rate.

RH-1-78 The Board approved TransCanada's proposal to change the pre-existing AOI methodology so that it would be based on the incremental costs associated with providing that service. TransCanada believed that lower AOI rates would help promote additional sales in an environment of excess gas supply and indicated that it would neither lose nor make any profit from AOI sales with rates based on incremental costs.

RH-2-83 The Board found it appropriate to set summer and winter tolls for AOI service based on the incremental fuel rates determined for the months of September and January respectively.

RH-2-85 TransCanada proposed that the winter AOI toll be equal to the CD toll at 100% load factor and the summer AOI toll be a discounted toll based upon the system average variable costs plus 6 cents/GJ of fixed costs. The Board denied TransCanada's proposal on the basis that it was not cost based and that any tolls other than incremental would inevitably result in cross subsidization among tollpayers.

RH-3-86 TransCanada initially sought continuation of the existing methodology for Interruptible Service (IS) toll design whereby the tolls would be based on incremental costs, but subsequently amended its application and proposed that all interruptible tolls be set at a toll equivalent to the firm service toll at 100% load factor in order to address a specific decontracting problem (i.e., TransCanada indicated that Simplot Chemical Company Ltd. had decontracted Firm Service (FS) and replaced it with IS).

The Board determined that a toll design that allows a firm service customer to nominate for interruptible service and receive that service virtually interruption free, at a toll lower than the FS toll, was not just and reasonable. Also, the Board determined that interruptible tolls should be set high enough to discourage customers from contracting for high quality interruptible service to meet their firm operating requirements while low enough to promote the use of interruptible service to meet legitimate interruptible operating requirements.

The Board set interruptible tolls at a level higher than FS tolls (i.e., at a toll equal to the CD-90 rate and CD-80 rate respectively) because the Western Section of TransCanada's system was under utilized and there was evidence of shippers relying on IS to meet firm requirements under an IS toll that was significantly less than the FS toll.

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2 Rate schedule under which a shipper guaranteed to take delivery of 90% of the maximum volume of gas specified in its gas sales contract.

RH-4-91 TransCanada proposed a toll design for interruptible tolls that would be more flexible and market sensitive. This toll design would establish two IS pools (a monthly pool and a weekly pool) and introduce a bidding mechanism within certain load-factor ranges (i.e., the winter load-factor range would be 80% to 110%, while the summer load-factor range would be 90% to 140%).

The Board determined that the proposed methodology would help ensure that available interruptible capacity would be used by those shippers who placed the highest value on that capacity and that the price paid for IS would reflect the value of this service to each shipper. In addition, the Board determined that, as long as the IS tolls recovered at least the incremental cost of providing the service, the potentially higher IS throughput (and IS revenues) should result in FS shippers receiving a benefit in the form of lower tolls.

RH-3-94 The Board approved a TTF Resolution whereby, in an effort to make IT tolls more market sensitive, parties agreed to create two equal-sized daily and monthly IT pools and to change the minimum and maximum IT prices to 50% and 200% of the FT toll respectively. The rationale for the 50% minimum floor price was that this level (plus the commodity toll) was a proxy for the incremental variable costs of providing IT service.

Post RH-3-94 The Board has approved several changes to the IT Toll Schedule submitted as TTF Resolutions, including removal of the maximum bid and elimination of the monthly pool.

Short Term Firm Transportation Service

RH-4-93 TransCanada requested approval of a new transportation service called STFT, which would have a minimum contract term of one month. The Board, in approving this service, determined that "... by offering STFT service, TransCanada should be able to more effectively utilize its system and increase revenues for the benefit of all firm shippers."

In 1996 TransCanada requested approval of a revised STFT service that would replace four existing services: Winter Firm Service; Temporary Winter Service; Peaking Service; and the existing STFT service. The revised STFT service would be a biddable service subject to a floor price of 100% of the FT toll with a price cap of 300% of the FT toll.

The Board, in approving TransCanada's revised STFT service, indicated that a floor price of 100% of the FT toll would be appropriate because it would help ensure that the value of existing long-term service would not be undermined. In addition, the revised STFT service would preserve the ability of firm shippers to fully utilize their transportation contracts because there would be no expected impact of STFT on the secondary market for TransCanada's firm capacity.

In 1997 Pursuant to a TTF Resolution, the Board approved an increase in the price cap for STFT to 400% of the FT toll to Philipsburg.

Chapter 2

Market and Competition Issues

2.1 Excess Capacity Situation and FT Contract Non-renewals

The recent 1998 expansions of the Northern Border Pipeline Company and TransCanada systems increased capacity by approximately 1200 TJ/d out of the Western Canada Sedimentary Basin (WCSB). The removal of constraints on capacity out of Alberta resulted in a tightening of supply in Western Canada relative to pipeline take-away capacity and an increase in the price of Alberta gas. The increased capacity also provided shippers with a variety of transportation alternatives; they could switch to a new pipeline, contract for supply at downstream hubs, contract for secondary market transportation or contract for interruptible transportation on existing pipelines. Given these alternatives, various shippers, with FT contracts expiring 31 October 1999, notified TransCanada, prior to the 30 April 1999 deadline, of their intention not to renew these contracts.

In the fall of 1999, TransCanada held an Open Season in an attempt to re-market approximately 770 TJ/d of released FT capacity. The Open Season resulted in a small amount of recontracted FT service. However, a total of 603 TJ/d of excess capacity related to decontracting remained available. This excess capacity represented approximately 8% of TransCanada's total operational capacity and included 344 TJ/d of long-haul capacity to the east; 179 TJ/d of capacity to Emerson, Manitoba; and 80 TJ/d of short-haul capacity to Saskatchewan.

In addition, the planned commencement of service on the Alliance Pipeline Ltd. (Alliance) and Vector Pipeline Limited Partnership (Vector) projects, in October and November 2000 respectively, is expected to result in an increase in the amount of excess capacity on TransCanada's system. A total of 1474 TJ/d of TransCanada FT capacity is due to expire effective 31 October 2000. Shippers with FT contracts eligible for renewal for the 2000/2001 contract year are required to notify TransCanada of their intention by 30 April 2000.

Views of TransCanada

TransCanada argued that the excess-capacity environment, along with the existing method of pricing short-term services, creates an incentive for shippers to abandon FT service, as discussed further in Section 2.2.

TransCanada submitted that its pipeline will face an environment of excess capacity for a considerable period of time. TransCanada expects that its system will eventually become fully utilized after Vector commences service, but indicated that "refilling" will depend primarily on market growth in the areas served by TransCanada, rather than on supply growth in Alberta. TransCanada suggested that, if the potential over the next several years for East Coast and Chicago gas to find its way into the markets traditionally served by TransCanada is taken into account, its system is unlikely to return to a fully-contracted environment in the near term.

Views of Parties

The Consumers' Gas Company Ltd. (Enbridge Consumers), Société en Commandite Gaz Métropolitain (SCGM) and Union Gas Limited (Union) are Eastern Canadian local distribution companies (the LDCs) who are major shippers on the TransCanada franchise. The LDCs submitted that the released November 1999 capacity is due to market demand and supply issues, such as decreased price differentials, the future availability of Vector capacity and fuel switching. In addition, the LDCs presented evidence that the non-renewal of 305 TJ/d of their long-haul capacity related primarily to alternative transportation delivery arrangements and secondary market transactions.

Enbridge Consumers stated that the majority of the 115 TJ/d of its released capacity related to the availability of future Vector capacity. Until Vector commences service in November 2000, Enbridge Consumers has arranged for delivery of its system gas at points adjacent to its franchise area, downstream of TransCanada's system. SCGM indicated that it released 59 TJ/d of TransCanada capacity as a result of forecast increases in fuel oil demand in its franchise area. Union indicated that, of the 131 TJ/d of capacity that it released, a large portion was recontracted on the secondary market or contracted on the Panhandle Eastern Pipe Line Company system. The remainder of the capacity released by Enbridge Consumers and Union related to direct-purchase customers who arranged for gas supply via Delivered Service contracts.

TransCanada Gas Services (TCGS) indicated that it did not renew 161 TJ/d of the total 179 TJ/d of capacity to Emerson, Manitoba when it failed to obtain market support to justify renewal of the service. TCGS also suggested that it expected future displacement of gas sales due to competition from the proposed Guardian pipeline.[3]

The Canadian Association of Petroleum Producers (CAPP) submitted that the current excess capacity and under-utilization of the TransCanada system is expected to last for several years. However, it suggested that the excess capacity into Dawn (i.e., the interconnection point of TransCanada with the Union system), after Vector commences service, is expected to peak and then decline. CAPP argued that the "lumpiness of capacity additions" is common and is a positive situation for the industry, since supply and markets are no longer capacity constrained out of the WCSB. CAPP referred to a forecast published by TransCanada indicating that WCSB production would increase in the order of 6.2 Bcf/d from 1997-2010. CAPP suggested that this expected production increase should eliminate the current excess-capacity situation. In addition, CAPP and the Industrial Gas Users Association (IGUA) also highlighted an article published by TransCanada stating that Canadian gas exports should be in high demand over the next year due to a temporary decline in U.S. supply of approximately 2 Bcfd, related to reduced oil patch activity following the decline in 1998 oil prices.

IGUA disagreed with TransCanada's assertion that excess capacity would exist for a considerable period. IGUA contended that the market is unpredictable and dynamic and that information is imperfect. IGUA argued that factors such as an increase in the price of oil or a prolonged cold snap could lead to the current excess-capacity environment disappearing as quickly as it appeared. IGUA noted that the

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3 Guardian Pipeline proposes to construct a 750 MMcfd pipeline from the Chicago hub to Wisconsin. It is TCGS's view that this pipeline will directly displace Canadian supplies accessed via TransCanada, Great Lakes Gas Transmission Ltd. and Viking Gas Transmission Co.

long-term demand forecast, relied upon by TransCanada, for Eastern Canada estimated an annual growth in demand of 3.1% over the 1998 to 2010 period.

SCGM suggested that the current excess-capacity environment may be a temporary issue and referred to a TransCanada letter mailed to renewing shippers, just prior to the 30 April 1999 notice deadline. The letter, dated 22 April 1999, indicated that TransCanada itself was of the view that the market situation could quickly reverse itself.

With respect to potential FT non-renewals as of 1 November 2000, CAPP, IGUA, and the LDCs argued that the long-term supply and market contractual obligations of various firm shippers would prevent decontracting at the level suggested by TransCanada. They submitted that these shippers have contractual responsibilities, such as the obligation to serve the core market or to maintain manufacturing or co-generation plant requirements, and cannot take the risk of migrating to IT. These parties further submitted that, since IT is interruptible by nature, it cannot be relied upon to meet firm requirements.

TCGS agreed with TransCanada's position that the excess capacity on TransCanada's system would exist for a considerable period of time. TCGS noted that both the Dawn to AECO forward price spread and the Henry Hub to AECO price differentials over the next few years remain tight. TCGS submitted that the tight spread/differential indicates that there is not enough gas to fill all of the ex-Alberta capacity, especially after Alliance commences service.

Views of the Board

The Board notes that the level of excess capacity related to November 1999 decontracting of FT service represents approximately 8% of TransCanada's total operational capacity. With respect to potential future non-renewals, the Board accepts IGUA's and the LDCs' arguments that long-term obligations of various firm shippers, such as the obligation to serve the core market or contractual obligations to supply manufacturing and co-generation plants, would likely prevent decontracting to the level suggested by TransCanada. Accordingly, the Board has not been persuaded that under-utilization of TransCanada's system will be a serious long-term problem.

The Board recognizes that short-term under-utilization is expected, given the recent facilities expansions out of the WCSB and the construction of competing pipelines. The Board agrees with CAPP that the "lumpiness" of capacity additions is common and in fact can be a positive situation for the industry, since supply and markets are no longer constrained by the lack of transportation capacity. The Board also agrees with intervenors that, given the complexity of the market and the long-term forecasts of increased natural gas demand and production growth, the period of excess capacity should be relatively short term.

2.2 Migration from FT to IT Service

Views of TransCanada

TransCanada submitted that, in the current excess-capacity environment, shippers can contract for IT service at half the price of FT service, yet receive essentially firm service. For this reason, TransCanada suggested that the existing methodology for pricing and allocating IT and STFT services creates an incentive for shippers to abandon FT and migrate to IT and is a disincentive for potential shippers to contract for new FT or STFT services. TransCanada referred to this phenomenon as "migration". TransCanada argued that, because of the excess-capacity situation, shippers would generally not bid more than the floor price. TransCanada further contended that, under the current excess-capacity circumstances, the entire amount of marginal capacity that would be available during the 1999/2000 period would likely be sold at or near the IT floor price of 50% of the FT rate.

TransCanada suggested that the migration problem would be a long-term one, which would result in a progressive shifting of costs from IT shippers to FT shippers. Consequently, TransCanada argued that, if the current IT pricing methodology with the floor price for IT service set at 50% of the FT toll is retained, migration could threaten the viability of its system.

TransCanada contended that having the discretion to vary the floor price would discourage migration and would mitigate, to the maximum extent possible, unwarranted cost shifting. According to TransCanada, having the discretion to vary the floor price should also preserve the value of FT service.

During the course of the hearing, TransCanada acknowledged that migration had not materialized as originally expected. TransCanada clarified its position by stating that it had not claimed that the decontracting that occurred effective 1 November 1999 was the result of a migration of shippers from FT to IT; it had only mentioned migration previously as a possible cause for the non-renewals. TransCanada maintained the view, however, that potential migration from FT to IT would remain a serious problem over the long term. With the advent of additional excess capacity on its system, TransCanada suggested that the probability of an economic incentive to migrate from FT to IT and STFT would increase.

TransCanada added that, although total IT quantities contracted post-November 1999 were lower than expected, IT quantities from Empress to Emerson did in fact increase in December 1999 by approximately the same amount as the quantities decontracted under FT at this delivery point. Short-haul IT deliveries from St. Clair also increased. TransCanada suggested that marketers were using the flexibility of the North American grid to find supply and deliver it to newly-contracted delivery points, at various hub locations. By contracting with LDCs and industrial customers for delivery at points adjacent to the LDCs' franchise areas, TransCanada argued that marketers may be using other options to deliver supply, such as short-haul IT service on TransCanada, diversions from export points, or long-haul IT service on TransCanada.

Views of Parties

All of the intervenors, with the exception of TCGS, argued that TransCanada had not presented concrete evidence to support the migration theory. CAPP stated that, after March 1998, there was a softening of demand for transportation on TransCanada's system, but there was no evidence to suggest that any of the 1999 FT non-renewals were due to an attempt to migrate to IT service. CAPP suggested that the

situation that exists today, with little IT quantities moving, is generally the same as last winter. CAPP and IGUA argued that the migration theory created the entire context for TransCanada's application. They suggested that, absent evidence of migration, there is no need to change the existing floor price for IT.

IGUA and the LDCs argued that the current excess-capacity environment is not caused by migration but rather by market demand and supply issues. IGUA submitted that TransCanada had merely speculated about the reason for post-November 1999 non-renewals, as opposed to possessing sufficient information to determine the underlying market situation. IGUA suggested that the Eastern Canadian market for gas remains strong and continues to grow. Similarly, U.S. LDC and cogeneration customers continue to take their gas supply at high load factors.

However, due to market developments in 1999, a number of exporters found themselves in a situation where the price received in the U.S. Northeast did not cover the cost of the commodity and the FT toll from the WCSB. Consequently, IGUA asserted that various shippers with FT contracts originally intended for delivery to the U.S. Northeast had arranged for delivery of WCSB gas to certain Eastern Canadian industrial customers, rather than to U.S. markets. As a result, these industrial customers, with FT contracts eligible for renewal, were then able to decontract a portion of their TransCanada capacity and still maintain a gas supply for operational purposes.

Renaissance Energy Ltd. (Renaissance) contended that the apparent absence of migration from FT to IT is not a demand issue, but rather a supply issue. Renaissance argued that decontracting had occurred because there is now excess pipeline capacity leaving the WCSB; there is more take-away capacity than there is supply. Renaissance argued that under-utilization on TransCanada has nothing to do with IT pricing and suggested that each shipper will balance toll savings with its ability to take on risk. Renaissance suggested that local distribution companies are good examples of shippers who are prepared to pay a higher toll to protect against the risk of interruption, no matter how small that risk might be. At the other end of the spectrum, Renaissance suggested that gas marketers are an example of shippers that will select highly reliable IT to meet their firm operating requirements at any toll lower than the FT toll.

Renaissance and the Independent Power Producers (IPPs) suggested that whether or not migration had actually occurred is irrelevant. They argued that the Board determined in RH-3-86 that a toll design that allows a customer to nominate for IT and receive that service virtually interruption free, at a toll that is lower than the FT toll, is not just and reasonable.

TCGS agreed with TransCanada's position that the current tolling mechanism creates an incentive to purchase highly reliable, low-priced IT capacity. TCGS suggested that migration may be occurring now as LDCs and industrial customers are currently receiving some "delivered services". TCGS indicated that it is impossible to determine whether these delivered services are using IT capacity on TransCanada's system.

With respect to whether migration may be occurring at Emerson, CAPP and the Alberta Department of Resource Development (Alberta) noted that TransCanada's marketing affiliate, TCGS, is responsible for at least 90% of the released capacity at Emerson. TCGS explained this situation in terms of a lack of demand. CAPP and Alberta disputed this and submitted that demand in the U.S. Midwest remains strong. They noted TransCanada's expectation that Canadian gas exports should be in high demand over the next year due to a temporary decline in U.S. supply.

Views of the Board

The Board notes that the majority of parties agreed that, in the short term, migration from FT to IT has not occurred to the extent anticipated by TransCanada. Uncontradicted evidence was presented by the LDCs showing that the November 1999 released capacity was due, not to migration, but primarily to alternative delivery arrangements related to decreased price differentials and the future availability of Vector capacity.

While IT quantities have increased to Emerson and from St. Clair, the Board finds that the certainty and magnitude of current and future migration from FT to IT has not been demonstrated to the extent asserted by TransCanada. The Board notes that parties have advanced alternative theories that can explain these increased IT quantities. Finally, the Board is of the view that the evidence does not support TransCanada's assertion that migration from FT to IT is a long-term problem.

2.3 Competitive Challenges

Views of TransCanada

As a result of FT non-renewals effective 1 November 1999, TransCanada, for the first time in many years, is faced with having excess capacity on its system. The commencement of service on the proposed Alliance and Vector pipelines will provide new challenges and is expected to increase, in the short term, the level of under-utilization on the TransCanada system. Consequently, TransCanada justified its proposed methodology for setting the floor prices of IT and STFT on the basis of its need to respond to competitive forces.

TransCanada submitted that, since it now operates in a new competitive environment, it requires a more flexible pricing framework. In this regard, TransCanada noted that it is currently engaged in ongoing discussions with interested parties concerning a new services and pricing model for the period beyond January 2001. These discussions were referred to as the Services and Pricing Negotiations.

TransCanada rejected the suggestion by several parties that it would be improper for the Board to consider the issues raised by this application in isolation from the broader context or from the ongoing Services and Pricing Negotiations. TransCanada argued that, by setting its application down for hearing, the Board had implied that addressing the issue was warranted.

Views of Parties

All parties agreed that TransCanada's system is currently experiencing a situation of excess capacity, and most agreed that this situation would likely be exacerbated, at least initially, following the commencement of service on Alliance and Vector. However, most parties submitted that TransCanada's IT/STFT pricing proposal would do little to solve the issue of system under-utilization and that solutions to this problem should be addressed as part of the Services and Pricing Negotiations that are currently underway.

CAPP argued that the issue of pricing flexibility and the response to competition are very much related to other issues. This point was supported by the LDCs, Centra Gas Manitoba Inc. (Centra Gas), Alberta,

la Procueure générale du Québec (Quebec), the Minister of Energy, Science and Technology for Ontario (Ontario) and Pan-Alberta Gas Ltd. (Pan-Alberta).

The LDCs pointed out that competition and the situation of excess capacity were not occurring at all locations on the TransCanada system. The LDCs further submitted that other viable alternatives, including FT enhancements, should be explored as a more effective means to address competitive challenges than the proposed pricing modifications.

TCGS opposed the notion that the Board should defer its decision on the ground that the subject matter of this application might be the subject of negotiations outside of the hearing room. TCGS submitted that such an approach would be asking the Board to defer its decision-making power to the negotiated settlement process, which in TCGS's view is not contemplated by the Act.

Views of the Board

The Board recognizes that the competitive landscape for Canadian gas pipelines is changing, resulting in short-term excess capacity on the TransCanada system. The Board also recognizes that TransCanada has the right to apply for changes to its Tariff to reflect this changing environment and to expect that the Board will consider and rule on its proposals.

The Board notes that TransCanada and its stakeholders are engaged in broader services and pricing negotiations that may lead to further proposals for changes to short-term pricing methodology to be effective as early as 1 January 2001. The Board supports such negotiations to the extent that they conform to its Guidelines for Negotiated Settlements. The Board is, however, of the view that it should not delay its consideration of TransCanada's current proposal until the results of such negotiations are available. The Board has therefore proceeded with its consideration and decision on TransCanada's current proposal.

Chapter 3

Economic Issues

3.1 Appropriateness of a Bidding Mechanism to Allocate Short-Term Capacity

Neither TransCanada nor the intervenors questioned the appropriateness of a bidding mechanism to allocate marginal capacity. However, several parties questioned the appropriateness of the level of the existing floor price in a situation of excess capacity.

Views of TransCanada

TransCanada did not propose any changes to the underlying bidding or auction mechanism for pricing and allocating IT and STFT. TransCanada argued that, if demand for capacity were sufficiently strong, the bidding process could result in the price of IT and STFT being bid up above the Reserve Price set by TransCanada. TransCanada submitted that this approach would be consistent with the existing pricing methodology and would retain the allocative efficiency associated with a bidding or auction process, should demand for capacity exceed supply.

TransCanada submitted, however, that the current methodology (i.e., an IT floor price of 50% of the FT toll) contains a flaw that, in an excess-capacity situation, leads to the price for IT being forced to the floor and thus to inappropriate and unnecessary cost shifting from IT to FT customers. TransCanada suggested that, in the longer run, the current methodology provides a strong disincentive for shippers to purchase available capacity on a firm basis.

Views of Parties

CAPP submitted that, for a biddable service, there should be a floor price that reflects a minimum cost, above which bidding should set the price. CAPP suggested that bidding sets the competitive price for a service in a very efficient way. CAPP added that it was not surprised that, given the recent decrease in demand for transportation service on TransCanada's system, the bids for IT and STFT service have been at generally low levels both in quantity and price.

IGUA disagreed with TransCanada's assertion that, under a situation of excess capacity, the current bidding process for IT would always result in bid prices equal to the floor price. IGUA submitted that the market value is simply the price that the market commands for any given good or service and that there is no need for intervention (by TransCanada) in order to achieve this outcome.

The LDCs submitted that, because IT is a marginal service whose revenues are credited to the pipeline's revenue requirement, the price for the service should be allowed to fluctuate between incremental variable cost and market value.

TCGS was generally supportive of TransCanada's views and argued that a properly functioning market would not consistently return prices for interruptible transportation at or close to the floor.

Renaissance submitted that, if supply is greater than demand, customers at an auction are not going to bid above the Reserve Price because they know that the commodity will be available at the Reserve Price. Accordingly, Renaissance suggested that, in an excess supply situation, the bidding mechanism does not necessarily establish the market value for the commodity.

Views of the Board

The Board considers that a bidding mechanism is an inherently fair and efficient way of allocating available capacity for short-term services. The Board notes that the resulting prices will be market responsive.

In periods when capacity is tight, an auction ensures that available capacity will be used by the shippers that place the highest value on it. A shipper that wishes to acquire capacity may be willing to bid up to the maximum value that it assigns to the capacity in order to increase the odds of obtaining the capacity. In this situation, shippers may obtain capacity at different prices, but the price paid by each shipper would not exceed the value that this shipper assigns to the capacity.

In periods of excess capacity, there are no concerns with allocative efficiency. While some shippers may place a higher value on the capacity, they will generally bid at or close to the floor price. This outcome parallels the outcome that would be achieved in a competitive market. In this excess-capacity environment, the market-clearing price equals the floor price, and capacity may be allocated to any shipper that assigns a value to the capacity that is equal to or greater than the floor price.

The Board concludes that a bidding mechanism is appropriate for IT and STFT in this case.

3.2 Pricing Discretion to TransCanada

Views of TransCanada

The minimum Reserve Price of 65% of the FT toll (later adjusted by TransCanada to 55% during the course of the proceeding) is intended to be a reasonable proxy for the incremental variable cost of providing IT service. TransCanada indicated that it would be prepared to adjust the minimum Reserve Price periodically to reflect changing market conditions, but did not propose a specific adjustment mechanism.

Both economically, and as a matter of public policy, TransCanada stated that it did not believe that maximum Reserve Prices for IT and STFT were necessary, appropriate, or likely to lead to efficient results in the long run. TransCanada proposed a range for the Reserve Factor "... as a means of allaying any concerns that parties may have, until more experience is gained with the proposed market structure."

TransCanada suggested that the IT pricing regime should provide for an annual premium for IT prices relative to FT prices in order to provide economic parity between the two services. TransCanada argued that if all IT service were priced no higher than FT service on a daily basis, shippers would have an incentive to migrate from FT to IT service. TransCanada submitted that, on an annual average basis, the

proposed maximum Reserve Prices for IT service would result in a price premium for IT service over FT service of approximately 10% for an IT shipper that purchased capacity every day of the year.

TransCanada also supported its proposed maximum seasonal Reserve Price on the premise that, in a situation of excess capacity, the system is likely to experience more seasonal flows, with shippers relying on IT as a reliable winter service when demand is high. TransCanada submitted that, as a matter of equitable cost recovery, it is reasonable to provide an opportunity to recover some of the seasonal value associated with IT service. In TransCanada's view, the maximum winter Reserve Price for short-term services of 125% of the FT toll might not be high enough to prevent system migration from FT service to IT/STFT service.

TransCanada indicated that it would be desirable, and in the interest of overall system efficiency, to have flexibility to define individual Reserve Prices for each individual path. However, TransCanada stated that it is prepared to continue with the existing approach of setting one floor price for the system (for each short-term service) at this time. TransCanada added that this approach would simplify consideration of this application, minimize any need for modifications to its information systems, and allow shippers to continue to operate in an environment with which they are generally familiar. TransCanada acknowledged that its proposal would be a "blunt instrument" if, as a result of gaming at one location, TransCanada decided to raise the floor price of IT on the entire system. This would result in an increased floor price for all shippers because of activity at one delivery point.

TransCanada argued that the main rationale for proposing pricing discretion is to provide greater benefits to firm shippers in the form of increased revenues. TransCanada submitted that there is a flaw in any mechanism that would establish a fixed floor for IT and STFT below the FT toll. TransCanada argued that, where the IT floor is consistently below the FT toll, shippers will seek to migrate from FT service to IT service even though the value of the capacity to the shipper may be above the IT toll.

The "fixed floor" alternatives to the current floor level, that were advanced by parties, would set the floor at 80% or 100% of the FT toll or some level above it. TransCanada submitted that, while these alternatives would all tend to discourage migration of FT shippers to IT service, they would render the pipeline unable to respond effectively to changing market conditions. TransCanada indicated that a failure to provide this opportunity to the pipeline and its shippers would result in unnecessary revenue losses.

TransCanada argued that two fundamental principles should govern short-term pricing on its system:

a) TransCanada's Tariff and toll-setting mechanism must not compel TransCanada to sell its short-term services at a price that is below the total cost of providing those services; and

b) Notwithstanding this first principle, TransCanada must be permitted to reduce the price of its short-term services below the total cost level in order to compete effectively, if market conditions require it to do so.

TransCanada supported the first principle by claiming that the true cost of providing IT service is the fully-allocated cost reflected by the FT rate and by the need to prevent migration from FT to IT service. TransCanada submitted that the second principle results from a desire to maximize short-term revenues in response to competition, for the benefit of firm shippers and itself.

TransCanada submitted that, if it is given the flexibility to manage the pricing of its services effectively, it would be in a better position to maximize revenues by having the ability to adjust the Reserve Price in order to optimize the price/quantity trade-off under prevailing market conditions.

TransCanada submitted that its proposed maximum Reserve Prices respond to concerns over potential abuse of market power because they would prevent TransCanada from unilaterally imposing prices for short-term services that are above the actual cost of providing those services.

TransCanada indicated that there is a distinction between deciding the appropriate pricing of services and determining the treatment of revenues received from the sale of those services. As a result, TransCanada did not agree with the suggestion that the issue of pricing discretion is linked to the issue of risk and cost consequences of non-renewed capacity.

Views of Parties

TCGS supported TransCanada's proposal for pricing discretion to vary the floor price of IT. All other parties opposed TransCanada's application for such pricing discretion. All parties opposed any change to the existing floor price for STFT and therefore rejected TransCanada's proposal to have the ability to set the floor price of STFT below or above the 100% FT toll.

CAPP submitted that there is a strong presumption against giving TransCanada pricing discretion with an equally heavy burden on TransCanada to demonstrate that its market power would be satisfactorily controlled. In CAPP's view, there is no evidence that the proposed constraint of putting a lower and upper range to the pricing discretion would in fact constrain market power. In support of this argument, CAPP pointed to the Federal Energy Regulatory Commission's (FERC) *Notice of Proposed Rulemaking, Regulation of Short-term Natural Gas Transportation Services* where the FERC observed that even a price below the maximum (i.e., the 100% FT toll) may still be a monopoly price. CAPP filed empirical evidence to suggest that TransCanada has substantial market power vis-a-vis Canadian producers. In this analysis, market power is defined as the ability of an individual firm or a group of firms to maintain prices above the competitive level or successfully exclude potential competitors for a sustained period of time. CAPP also raised the concern that withholding capacity, whether by simply taking capacity off the market or by pricing it off the market, can itself be an anti-competitive act.

CAPP submitted that the concept of giving pricing discretion to a long-line transmission pipeline raises many issues that can only be evaluated in the context of the entire service structure and rate design. CAPP expressed its view that pricing discretion should be addressed in the Services and Pricing Negotiations or in TransCanada's 2001 Tolls application. Specifically, CAPP indicated that the issue of price discretion is linked to other aspects of rate design and cost allocation and suggested that TransCanada is using this proceeding to obtain an advantage with respect to future negotiations with its shippers.

CAPP submitted that TransCanada's proposal did not contain a detailed explanation of the criteria, standards, or other objective factors that are required to govern pricing discretion. CAPP further submitted that such absence leads to an inability to ascertain or monitor how pricing discretion would be exercised. CAPP argued that pricing discretion could interfere with the commodity market.

IGUA submitted that there is nothing in TransCanada's proposal preventing the potential abuse of market power. IGUA suggested that its concerns over the potential abuse of market power could have been alleviated had TransCanada proposed an objective formula or standards to provide a clear framework for the exercise of pricing discretion, or had TransCanada volunteered to be subject to some form of monitoring or control by the Board.

IGUA expressed concern that there could be potential losses for TransCanada's FT shippers if the floor price is set either too low or too high, particularly if the consequences of such mistakes were assumed by FT shippers. IGUA's concerns were amplified by the fact that market conditions are not the same on all segments of TransCanada's system. IGUA submitted that, if the Reserve Factor is not adequate for certain segments, then there could be discrimination against shippers on these segments.

IGUA argued that, if a pipeline company is allowed to unilaterally price transportation services, it would inevitably influence the price of delivered gas and therefore the price that the buyer and seller would negotiate for the commodity. IGUA contended that TransCanada's proposal would also inevitably interfere with the free operation of the Secondary Market for FT capacity, which in IGUA'a view would constitute a violation of the principles set forth in the Board's Decision of 2 February 1995 on *Possible Changes to the Secondary Market for Natural Gas Transportation Services*. IGUA submitted that allowing TransCanada to have pricing discretion would aid those firm shippers, such as TCGS, who seek to sell excess FT capacity in the Secondary Market by fostering higher IT prices and thus higher Secondary Market prices.

TCGS supported TransCanada's maximum Reserve Prices of 100% of the FT toll in the summer and 125% of the FT toll in the winter, stating that those rates are cost based and send appropriate pricing signals to potential shippers. TCGS also supported allowing TransCanada the discretion to discount below those rates in order to maximize revenue by selling capacity that would otherwise not have been sold during periods of low demand. TCGS argued that granting TransCanada pricing discretion would prevent potential shippers from assuming that discounts for IT would always be there.

TCGS submitted that parties' concerns over TransCanada's potential abuse of market power were overstated and suggested that CAPP's evidence appeared to be aimed at an application by TransCanada for complete discretion to set its rates. TCGS argued that there is no foundation for IGUA's suggestion that TransCanada's proposal had been developed mainly for the purpose of favouring TCGS as an affiliate.

The LDCs submitted that there is a fundamental link between IT revenues, the pricing of discretionary services, and risk and reward mechanisms. They were concerned that TransCanada's application would disconnect those issues. Specifically, the LDCs considered the pricing of short-term service to be only one method by which TransCanada and its stakeholders could address issues arising from the potential under-utilization of the TransCanada system. The LDCs were concerned that TransCanada's proposal would allow TransCanada unilateral discretion in the pricing of short-term services without any risk or even accountability on TransCanada's part. The LDCs submitted that imposing risk on TransCanada would give shippers some assurance that TransCanada would behave appropriately.

The LDCs indicated that the Services and Pricing Negotiations provide the ideal forum within which to address the pricing of short-term services in the context of the related service, pricing and risk-allocation

issues. The LDCs noted that, if a resolution is not achieved in those negotiations, the Board would have the opportunity to review all of the issues when TransCanada files its 2001 Tolls application.

The LDCs submitted that there is considerable doubt regarding the ability of TransCanada to capture greater IT revenues under its proposal vis-a-vis the current methodology. The LDCs suggested that TransCanada's proposal could only be useful if the circumstances warranting an increase to the IT floor tended to occur at different times than the circumstances warranting a decrease to the floor. In the LDCs view, they are more likely to be occurring at the same time, given that excess capacity usually occurs as a result of competition.

The IPPs submitted that they are not ideologically opposed to the exercise of pricing discretion by pipelines, pointing out that discretion has existed for years on FERC-regulated pipelines. The IPPs suggested that the parameters of the discretion sought by TransCanada in this case are quite closely confined. They suggested that the Board could audit the process and step in if it saw abuse or market failure, or if there was a complaint.

However, the IPPs indicated that affected parties would need to be comfortable with the exercise of pricing discretion. In this instance, the IPPs argued that TransCanada had not provided participants with sufficient comfort to conclude that discretion would be exercised in a manner that would maximize revenues to FT shippers.

Centra Gas submitted that the pricing of IT and STFT are interrelated with other service and pricing issues and should not be considered in isolation.

Renaissance submitted that TransCanada's proposal for pricing IT has some potential merit, as there would at least be a possibility that IT would be sold at a price higher than incremental variable cost. However, Renaissance submitted that TransCanada should not have discretion to price IT because it would put TransCanada in a conflict of interest, in that TransCanada would have to choose between a floor price that maximizes the contribution towards fixed costs and one that maximizes revenues.

Alberta viewed TransCanada's application as an attempt to raise the bid price above the existing floor in order to ensure that the pipeline captures any differential that is available. Alberta submitted that granting discretion to TransCanada is tantamount to giving TransCanada the authority to interfere in or manipulate the markets. Alberta argued that giving pricing discretion to TransCanada should place a heavy onus on the pipeline to demonstrate thoroughly how its proposal would work and to give some comfort to those who will bear the brunt of its mistakes. Alberta did not believe that TransCanada had demonstrated how its proposal would work, pointing to, *inter alia,* the competing objectives of reducing migration and of attempting to compete by lowering prices. Alberta agreed with parties who suggested that the pricing of short-term services should be looked at as part of the Services and Pricing Negotiations.

Quebec submitted that TransCanada should not be granted discretionary pricing authority in the existing situation, particularly with no risk sharing. Quebec argued that such changes must be discussed as a whole, either during the ongoing Services and Pricing Negotiations or in an in-depth hearing on changes to TransCanada's services and pricing methodology.

Ontario expressed the view that the ongoing Services and Pricing Negotiations provide an appropriate framework to resolve the issues before the Board in this proceeding. Ontario argued that adjustments to IT and STFT services should be considered in the context of a broader analysis of TransCanada services and pricing methodology.

Pan-Alberta provided comments to the effect that pricing flexibility must be part of discussions that provide for a broader scope and a longer-term solution. In particular, Pan-Alberta argued that the discounting of STFT should not be approved without considering the sharing of the risk and reward.

In its comments, Direct Energy Marketing Limited (DEML) opposed the implementation of any controls on open-market forces for the benefit of any party. DEML submitted that, if the controls that TransCanada proposes were implemented, they would not solve TransCanada's excess capacity and FT decontracting difficulties.

Views of the Board

Historically, pipelines have been viewed as natural monopolies, requiring regulatory oversight in order to prevent the potential abuse of market power. Pipelines have not generally been granted any unilateral pricing discretion to set the prices for their services. However, pricing discretion has been determined to be appropriate in specific circumstances or for certain services. For example, pricing discretion has been granted to TransCanada for its Parking and Loan service and its Multiple Handshake/Pooling service.

Pricing discretion may become more widely accepted as the industry moves into a more competitive, market-based environment. The Board has both acknowledged and encouraged the trend towards a more flexible and market-responsive regulatory framework, as reflected in various decisions and evidenced by the Board's support for the incentive settlement process.

In this case, however, the Board is of the view that the evidence did not demonstrate that it would be appropriate to grant pricing discretion to TransCanada for the setting of the floor prices of IT and STFT services. In the Board's view, in order to fully assess the appropriateness of pricing discretion, it would be necessary to undertake a comprehensive review of TransCanada's services and pricing methodology.

The Board is concerned that the pricing discretion sought by TransCanada was not clearly structured and confined. The Board notes the absence of objective criteria and transparency in the setting of the floor prices. The Board also notes the competing nature of the underlying objectives supporting TransCanada's application. The Board believes that market conditions where TransCanada would want to raise prices to prevent migration and market conditions where it would want to lower prices to respond to competitive forces are likely to occur at the same time. It is unclear which objective would prevail in those circumstances. The Board agrees with intervenors who argued that the lack of clear and objective criteria for the exercise of the proposed discretion makes it inappropriate.

The Board notes that the exercise of pricing discretion necessarily entails the potential for error or for misjudgment of the market. In the Board's view, there should be

accountability for any such error or misjudgement. TransCanada's proposal for pricing discretion was not accompanied with direct accountability for the consequences of the exercise of its discretion.

TransCanada sought to obtain pricing discretion across its entire system, while justifying the need for discretion by the presence of competitive forces. In the Board's view, competitive forces are only present on limited segments of the TransCanada system and the impact of those forces has not been assessed by the Applicant. The Board notes that TransCanada's witness acknowledged that TransCanada's proposal would be a blunt instrument if prices were raised on the entire system to address situations at specific delivery points.

It is apparent that TransCanada and its affiliates operate virtually all of the ex-Alberta gas pipelines and, as a result, TransCanada has significant market power vis-a-vis Canadian producers and consumers. Moreover, most Eastern Canadian customers have only limited transportation alternatives to the TransCanada system. The Board acknowledges that this situation may change with the commencement of service on Alliance and Vector. In the Board's view, however, TransCanada will continue to occupy a dominant position.

The evidence did not demonstrate that TransCanada would not be in a position to potentially abuse its market power under its proposal. The Board's concerns in this respect are exacerbated by the wide range within which TransCanada could exercise pricing discretion.

The Board rejects TransCanada's suggestion that it would merely have the discretion to reduce the prices of its short-term services below the full-cost level. The suggestion is based on the view that the cost of providing IT and STFT service is the fully-allocated cost or the 100% FT toll. As further discussed in Section 4.3.1, this position is not supported by TransCanada's present cost-allocation methodology and rate design, which allocates all of the fixed costs to firm shippers. Any change to the appropriate cost causation of short-term services on the TransCanada system could not be considered outside a comprehensive review of TransCanada's services and pricing methodology.

The Board notes that TransCanada's proposal was opposed by almost all other parties.

In summary, the Board finds that TransCanada's proposal has not adequately addressed the concerns expressed during the hearing.

Decision

The Board denies TransCanada's proposal for discretion to set the floor prices of IT and STFT services.

Chapter 4

Toll and Tariff Issues

4.1 Comparison of FT, STFT and IT Services

In its evidence, CAPP provided a comparison of the terms and conditions of FT, STFT and IT services. This comparison is reproduced in Table 4-1. The Board notes that no party challenged the information contained in this Table, which is included in these Reasons for Decision for ease of reference.

Table 4-1
Comparison of TransCanada's FT, STFT and IT Services

	FT Service	STFT Service	IT Service
Minimum Term	1 year	14 days	Daily service
Maximum Term	None	9 months	Daily service
New Facilities	May be constructed only if: (a) a long-term requirement for the facilities is shown, and (b) NEB approval is received	Will not be constructed to accommodate this service	Will not be constructed to accommodate this service
Curtailment	Not subject to curtailment or interruption except under Sections XI and XIV of General Terms and Conditions	Same priority as FT except under upstream capacity diversion	Subject to curtailment or interruption at TransCanada's discretion.
Fuel Charges	Average fuel cost	Average fuel cost	Incremental fuel cost by proxy
Rate Structure	Demand charge; No under-utilization penalty; Diversions allowed; Nomination of temporary receipt and delivery points; Assignable; Automatic renewal rights.	Demand charge; No under-utilization penalty; Diversions allowed; Nomination of temporary receipt and delivery points; Assignable; No automatic renewal rights.	No demand charge; Under-utilization penalty; No diversions allowed; No nominations of temporary receipt and delivery points; Not assignable; No automatic renewal rights.
Source: TransCanada's FT, STFT and IT Toll Schedules			

Views of TransCanada

TransCanada submitted that, under a situation of excess capacity, IT and FT services would be identical for all practical purposes. TransCanada stated that the Board had arrived at essentially the same conclusion in its RH-3-86 proceeding.

TransCanada challenged the view that IT service is inherently inferior to FT service and accordingly should be priced lower than FT. TransCanada noted that parties had relied on a review of TransCanada's Terms and Conditions for IT and STFT service to support their position. However, in light of the current gas markets, TransCanada argued that it is meaningless to ascribe value to a type of service in a vacuum and that services have whatever value shippers are willing to pay.

Views of Parties

Most parties submitted that STFT is equivalent to FT because it is a firm service with the same curtailment priority as FT. Some parties also suggested that during periods of excess capacity, STFT is a more valuable service than FT because it has the same reliability as FT and does not require a long-term contractual commitment.

IGUA and CAPP expressed the view that the underlying characteristics of both IT and STFT are such that they are inherently inferior to FT, regardless of the prevailing conditions under which the pipeline is operating. In addition, IGUA submitted that IT and STFT are inferior to FT on the basis that there is no certainty regarding the availability and/or renewability of service.

Renaissance supported TransCanada's view that IT is equivalent to FT, noting that, for the foreseeable future, IT service on TransCanada would continue to be available virtually interruption free.

The LDCs argued that IT is not currently available on the TransCanada system on a firm basis and that IT is not perceived by TransCanada's shippers to be equivalent to firm service. As an example, they pointed to the recent curtailment of overrun service on Storage Transportation Service (STS) related to short-haul deliveries from Parkway to Montreal during January 2000. If shippers had relied upon IT service in the Eastern Delivery Area, the LDCs contended that IT service would have been curtailed based on its priority.

> ***Views of the Board***
>
> The Board is of the view that, under TransCanada's Tariff, and in practice, IT service is generally a less attractive service than FT. TransCanada's Tariff provides that IT service is subject to curtailment or interruption at any time in TransCanada's sole discretion. Moreover, shippers presented evidence, which the Board finds persuasive, that for them, IT is not an acceptable substitute for FT under current circumstances. Accordingly, the Board rejects TransCanada's position that IT and FT are essentially equivalent.
>
> With respect to STFT, the Board is of the view that the character of this service is different from FT in several important respects. While STFT is a firm service, it does not have renewal rights, nor will TransCanada build additional facilities to provide STFT service. The Board therefore does not accept TransCanada's position that STFT and FT service are equivalent.

4.2 Short Term Firm Transportation

4.2.1 Short Term Firm Transportation Floor

Views of TransCanada

TransCanada originally proposed a minimum floor price for STFT service of 65% of the FT toll and a maximum Reserve Price of 100% and 125% of the FT toll for the Summer and Winter Periods respectively. TransCanada requested permission to establish the Reserve Price for STFT within these boundaries, with the existing bidding mechanism remaining in effect. TransCanada submitted that it should be permitted to set the Reserve Price for short-term services at a level below the maximum Reserve Price, if doing so would benefit the system by generating incremental revenue.

During the proceeding, TransCanada adjusted its proposed minimum floor price downward to 55% of the FT toll, due mainly to a decrease in the estimated cost of fuel gas.

Views of Parties

All parties opposed a change to the current floor price for STFT. Parties were generally of the view that STFT is of similar value to FT, since it is a firm service with the same priority as FT. In addition, STFT service does not have a right of renewal. Lastly, the short-term nature of STFT could make it more valuable than FT in specific circumstances.

TCGS submitted that the floor price for STFT should remain at 100% of the FT toll, with the understanding that TransCanada could apply for a discounting methodology if value is being lost to the system as a result of the toll level. The LDCs submitted that discounting STFT could actually cause migration from FT to STFT. CAPP expressed the view that TransCanada's proposal to offer STFT at less than 100% of the FT toll is the beginning of a discount policy, and that discounting raised many complex issues, none of which could be addressed in the current application. IGUA stated that TransCanada had presented no evidence to justify discounts over the true cost of providing STFT service.

Views of the Board

The Board notes the opposition of all parties to TransCanada's STFT proposal. Further, the Board is of the view that the evidence presented during the proceeding does not support any change to the floor for STFT.

Decision

The floor price for STFT shall remain at the 100% load factor daily equivalent of the FT toll.

4.2.2 Short Term Firm Transportation Ceiling

Under TransCanada's Tariff, the current maximum ceiling price for STFT is 4.0 times the 100% load factor daily equivalent of the FT toll for transportation from Empress to Philipsburg.

Views of Parties

IGUA proposed that the STFT ceiling be removed to let market forces determine the value of the service. No other parties, including the Applicant, specifically addressed this issue.

Views of the Board

The Board notes that the evidence did not support the removal of the maximum ceiling price for STFT.

The Board also notes that the current maximum ceiling price for STFT is not likely to be encroached upon under TransCanada's current operating conditions.

Decision

The maximum ceiling price for STFT shall remain 4.0 times the 100% load factor daily equivalent of the FT toll for transportation from Empress, Alberta to Philipsburg, Quebec.

4.3 Interruptible Transportation

4.3.1 Cost Causation of Interruptible Transportation Service

Views of TransCanada

TransCanada submitted that, under conventional cost-causation analysis, the cost properly attributable to the provision of interruptible transportation service is no less than, and likely in excess of, the 100% load factor FT toll. The rationale for TransCanada's assertion is that, when IT shippers utilize the pipeline's system, they make the same use of the pipeline's facilities as firm shippers, and accordingly should make the same unit contribution to the recovery of fixed costs as firm shippers that use their full contract demand every day of the year.

Views of Parties

CAPP argued that the incremental variable cost is the appropriate basis for IT pricing on the TransCanada system. CAPP submitted that the incremental variable cost approach has historically been the basis for interruptible service pricing on TransCanada through periods of both tight and excess capacity. This view was shared by IGUA, who argued that, since interruptible service is provided from capacity not required by the firm shippers for whom the pipeline was built, there is no reason to allocate fixed costs to this service. The LDCs also shared this view and indicated that IT is a marginal service and, as a result, the incremental variable cost represents the cost of providing the service.

TCGS and Renaissance shared TransCanada's view on the cost-causation principle for IT service. In addition, Renaissance suggested that since IT shippers have direct access to uncontracted firm capacity, there is no reason why they should be permitted to avoid making a contribution to the fixed costs of that capacity.

Views of the Board

The Board notes that, under TransCanada's currently-approved cost allocation methodology, firm shippers are allocated all of the fixed costs of the TransCanada system. As a result, the Board concludes that, absent an overall rate design review, the incremental variable cost continues to be the appropriate cost-based approach of setting the floor price for IT service on the TransCanada system.

4.3.2 Interruptible Transportation Floor

Views of TransCanada

TransCanada stated that, in view of the current market conditions, there is a need to modify the existing methodology (i.e., IT floor level of 50% of the FT toll) because of inappropriate and unnecessary cost shifting from IT to FT customers in the short term and a migration of shippers away from FT service in the long term. In support of its proposed minimum floor price, TransCanada provided estimates of incremental variable costs for annual average IT/STFT deliveries in 1999/2000 to the Eastern Zone, which indicated that the minimum floor price should be approximately 65% of the FT toll. TransCanada subsequently indicated that, due to a decrease in gas prices since TransCanada filed its application, it would be prepared to accept a minimum floor price of 55% of the FT toll.

TransCanada submitted that, under the existing pricing methodology, IT revenues would recover only the incremental variable cost of providing IT service. Accordingly, TransCanada proposed to increase IT rates to ensure that they make a contribution to fixed costs for the benefit of FT shippers. However, TransCanada indicated that, if the IT toll is set at 100% of the FT toll during the summer and 125% of the FT toll in the winter, it would reduce the flexibility for shippers wanting to remain active in the spot market and result in TransCanada foregoing revenues that might otherwise be available to it if it would be permitted to discount IT. TransCanada stated that this approach represents a compromise between the interests of FT shippers who want the rate set at 100% of the FT toll and those shippers who want to keep IT tolls as low as possible.

Views of Parties

The LDCs presented evidence that IT service is of lesser value than FT and that a proxy of incremental variable costs should be retained as the basis for establishing the IT floor. The LDCs proposed calculating a floating floor for IT based on a proxy for incremental variable costs with monthly adjustments reflecting system utilization and fuel prices. The LDCs submitted that, by adjusting the floor level for IT on a monthly basis, the IT floor price would reasonably approximate the actual incremental variable costs of providing the service, while providing a modest level of price stability. The LDCs proposed that the floor price should be adjusted once a month as a function of the changing inputs to the formula, not at TransCanada's discretion.

As an alternative to a floating floor for IT tolls, the LDCs jointly expressed support for a fixed IT floor price of 80% of the FT toll as had been derived in the evidence of Enbridge Consumers. Enbridge Consumers' calculations provided the minimum IT price for two cases (i.e., one using TransCanada's forecasted gas cost and the other using the maximum intra-Alberta gas price recorded in 1999) for an IT volume of 350 MMcfd. The minimum IT prices were calculated to be 73.8 % and 83.6 % of the FT toll, respectively, using TransCanada's methodology and extrapolating from information provided by

TransCanada to estimate the system fuel rate. Enbridge Consumers selected a minimum Reserve Price of 80% as an approximate average of this calculated range. The LDCs suggested that this level would be a conservative level that would recover incremental variable costs without exceeding that level in most circumstances. They argued that any inaccuracies would benefit FT shippers.

The LDCs requested that any Board decision regarding the IT floor be made for an interim period only. As a further alternative, the LDCs proposed dismissing TransCanada's application. Centra Gas agreed with the LDCs' proposals for establishing a minimum floor price for IT.

CAPP submitted that the IT floor price should be a proxy for incremental variable cost and that, by seeking to recover the fully allocated cost of service, TransCanada is fundamentally challenging the incremental variable cost approach approved by the NEB in RH-4-91. CAPP indicated support for the LDCs' joint proposal for a floating floor price for IT.

IGUA expressed the view that the existing IT pricing methodology and minimum floor price are appropriate. IGUA submitted that a high floor price for IT could discourage its use, resulting in little or no IT revenue, and that revenues would be maximized by leaving the current floor at 50% of the FT toll. IGUA did not, however, strongly oppose the LDCs' joint floating floor proposal, subject to discussions being held as to the most appropriate formula to determine the incremental cost of providing the service. IGUA expressed concerns with respect to the LDCs' alternative proposal of a fixed IT floor at 80% of the FT toll and suggested that this floor level may be attempting to recover some fixed costs.

Alberta submitted that the existing Tariff should be maintained and the application should be denied. Alberta suggested that the application is premature because there is no evidence of migration and because comprehensive negotiations are currently underway to discuss issues including IT and STFT tolling.

The IPPs submitted that a toll design that allows for interruptible service at 50% of the FT toll and is interruption-free is not just and reasonable and, therefore, the IT floor price should be set at 100% of the FT toll.

Renaissance expressed the view that TransCanada's proposal would result in tolls that were not just and reasonable and that IT tolls should be set at no less than 100% of the FT toll with the current bidding mechanism left in place. Renaissance submitted that TransCanada does not build capacity for IT service and noted that the capacity that is currently available is turned-back FT capacity that is being offered as IT. If an IT shipper has access to uncontracted firm capacity, Renaissance argued that the IT shipper should contribute to the fixed costs of that capacity. Renaissance submitted that FT shippers are in competition with IT shippers and that the LDCs' joint floating-floor proposal would undermine the value of FT service on TransCanada's system.

TCGS submitted that the current toll for interruptible service fails to capture the value of IT and that the current floor price fails to deal with the demonstrated migration problem on the TransCanada system. TCGS expressed the concern that leaving the IT toll at 50% of the FT toll would result in increased opportunistic usage of IT. TCGS indicated that the costs of transporting firm and interruptible gas are identical in that the same fixed assets are used in the same manner and to the same extent for providing both services. However, TCGS argued that, if the floor price were set at 100% of the FT toll, some opportunities to ship gas would be lost.

TCGS supported TransCanada's proposed maximum Reserve Prices of 100% of the FT toll in summer and 125% of the FT toll in winter, with discretion to discount below those rates. TCGS expressed the

view that a fixed floor would not work effectively because it would always be too high or too low. TCGS indicated that it would have liked to have seen different Reserve Prices for various delivery areas but understands that some parties might view this as discriminatory.

Quebec expressed the view that the IT toll should not be less than the incremental variable cost. Quebec noted that the major component of the incremental variable cost is the fuel-gas cost, which varies considerably over time, and that it would, therefore, be desirable to have a mechanism for periodically adjusting the minimum floor price. Quebec submitted that, in situations when there is excess capacity, IT service is very similar to FT service and, hence, there may be merit to the argument for a certain contribution to fixed costs. Quebec indicated that it would not oppose a fixed IT floor which included a contribution to fixed costs, provided it was less than 100% of the FT toll.

Views of the Board

The Board is of the view that there is insufficient evidence of shippers relying on IT service to meet firm requirements to warrant, at this time, a policy-based change of the type proposed by TransCanada to the pricing of IT service.

The Board continues to believe that an estimate of incremental variable costs remains the appropriate cost-based approach to establishing the floor price of IT on the TransCanada system.

The Board finds that there may be merit in monthly or seasonal adjustments to the floor price of IT to reflect changing conditions. However, the Board finds that it has insufficient information to evaluate the LDCs' floating floor proposal. The Board believes that markets need a stable environment, and does not believe that the LDCs have adequately assessed the impact of their proposal on these markets.

The Board concludes that, in the existing circumstances, the floor price of IT should remain fixed and represent a reasonable proxy for incremental variable costs. The Board accepts Enbridge Consumers' initial proposal as a simple and reasonable approximation of incremental variable costs, while ensuring that these costs would be recovered under most circumstances.

The Board is of the view that an IT floor price of 80% of the FT toll should maximize short-term services revenue on the TransCanada's system without undermining the value of FT.

With respect to the LDCs' request for an interim decision, the Board notes that, under the Act, there is provision for any party to request a change to an approved Tariff at any time. Therefore, the Board does not consider it necessary that a decision in this proceeding be made interim.

Decision

The Board approves an IT floor price, effective 1 May 2000, equal to 0.80 times the 100% load factor daily equivalent of the FT toll for service over the applicable path.

TransCanada is directed to make the necessary changes to its Tariff and submit these forthwith to the Board for its approval.

Chapter 5

Other Issues

5.1 Request by IGUA for an Order Pursuant to Section 71 of the Act

Section 71(2) of the Act states:

> *"The Board may, by order, on such terms and conditions as it may specify in the order, require a company operating a pipeline for the transmission of gas to receive, transport and deliver gas offered by a person for transmission by means of the pipeline."*

This section provides a mechanism to address open-access issues.

Views of TransCanada

TransCanada indicated that its preference would be to solve the underlying problem related to IT and the current excess-capacity environment via a toll-setting mechanism. However, it suggested that an alternative approach to resolve this issue would be for TransCanada to withhold available capacity from the market. TransCanada submitted that, although its practice has been to offer all available capacity as IT, its IT Toll Schedule does not explicitly require this.

TransCanada conceded that the FERC does not allow its pipelines to withhold capacity. Further, TransCanada argued that it makes more sense, from a public interest perspective, to consider that the pipeline has an obligation under the open-access principle to make its capacity available to whoever is prepared to pay the appropriate rate.

TransCanada expressed its objection to the Board making any declaratory statement pursuant to section 71 of the Act on the basis of an insufficient record and the comments made by TransCanada's witness. TransCanada also noted that section 71(2) implies that such relief is available to "a person" as that term is defined. Relief is not available to broader interests in a vacuum.

Views of IGUA

During the course of the proceeding, IGUA requested that, in order to dispel any misunderstanding regarding the possible illegality of the withholding of capacity option, the Board issue an order pursuant to subsections 71(2) and 71(3) of the Act requiring TransCanada "... to offer all available capacity as IT and STFT services, and that such posting be offered under an open, continuing, and just and reasonable basis."

Views of the Board

The Board notes that IGUA did not present any evidence demonstrating that TransCanada withholds capacity on its system. Furthermore, TransCanada indicated in its evidence that it does not withhold capacity on its system. Accordingly, the Board is of the view that the issuance of a section 71 order is not warranted at this time.
In addition, the Board notes that it would be contrary to natural justice and procedural fairness to make an order pursuant to section 71 of the Act without providing proper

notice to TransCanada and interested parties. The Board is of the view that IGUA should have ensured that proper notice was given by making a timely motion, prior to the hearing, to amend the Hearing Order to include this issue.

5.2 Renaissance's/IPPs' Proposal

Views of Parties

The LDCs raised a concern regarding the appropriateness of actions by certain parties in advancing their positions. This concern relates to the failure of Renaissance and the IPPs to file evidence and present a witness to speak to a position advanced only in Final Argument. The LDCs submitted that they did not have an opportunity to test the proposal by Renaissance with information requests and cross-examination, nor to speak to it in their evidence. Accordingly, in the LDCs' view, the Board should give very little weight to Renaissance's (and the IPPs') proposal.

In Renaissance's view, the only relevant piece of evidence is that " ... TransCanada is and will continue to be under-utilized." and that "It then becomes a matter of argument as to what IT toll design is appropriate in those operating conditions."

The IPPs stated that section 20 of the Act "... allows [the Board] to grant further or other relief to the same extent as if the application had been made for such relief, provided the Board finds it to be just and proper."

Views of the Board

The Board must have a complete factual record, including the results of cross-examination, in order to make appropriate findings of fact and decisions.

As a matter of practice, the Board therefore expects to hear alternative proposals and new approaches offered by parties through evidence, and subsequent argument based on that evidence. Parties are expected to advance substantive positions by way of fact and argument, and not by argument alone.

Chapter 6

Disposition

The foregoing chapters together with Order No. TG-1-2000 constitute our Reasons for Decision in respect of the Application heard by the Board in the RH-1-99 proceeding.

R.J. Harrison
Presiding Member

J.S. Bulger
Member

C.L. Dybwad
Member

Calgary, Alberta
April 2000

Appendix I

Order TG-1-2000

ORDER TG-1-2000

IN THE MATTER OF the *National Energy Board Act* (the Act) and the regulations made thereunder; and

IN THE MATTER OF an application dated 29 October 1999 by TransCanada PipeLines Limited (TransCanada) for an Order pursuant to Part IV of the Act regarding Tariff Amendments to Interruptible Transportation (IT) and Short Term Firm Transportation (STFT) Toll Schedules; filed with the National Energy Board (the Board) under File 4775-T001-1-11.

BEFORE the Board on 30 March 2000.

WHEREAS TransCanada filed an application dated 29 October 1999 for an Order amending its IT and STFT Toll Schedules;

AND WHEREAS the Board on 18 November 1999 issued Hearing Order RH-1-99;

AND WHEREAS a public hearing pursuant to Hearing Order RH-1-99 was held in Calgary, Alberta during which time the Board heard the evidence and argument presented by TransCanada and all interested parties;

AND WHEREAS the Board's decisions on the Application are set out in its Reasons for Decision dated April 2000, and in this Order;

AND WHEREAS the Board has considered the evidence and submissions, and has found that the tolls to be charged by TransCanada in accordance with this Order are just and reasonable;

THEREFORE, IT IS ORDERED, pursuant to section 59 and the other relevant sections of the Act, that:

1. TransCanada shall set the minimum IT floor price, effective 1 May 2000, equal to 0.80 times the 100% load factor daily equivalent of the Firm Transportation (FT) toll for service over the applicable path or segment.

2. TransCanada shall maintain the current minimum STFT floor price equal to the 100% load factor daily equivalent of the FT toll for service over the applicable path or segment.

3. TransCanada's request for discretion to set a Reserve Price (i.e., a minimum bid price) for IT and STFT is denied.

4. TransCanada shall maintain the current maximum ceiling price for STFT of 4.0 times the 100% load factor daily equivalent FT toll for transportation from Empress, Alberta to Philipsburg, Quebec.

5. TransCanada shall forthwith file with the Board for approval and serve on all parties to RH-1-99, a revised IT Toll Schedule conforming with the decisions outlined in the RH-1-99 Reasons for Decision dated April 2000 and with this Order.

6. The Board's decision set out in its RH-1-99 Reasons for Decision, and the changes to TransCanada's IT Toll Schedule authorized under this Order are to take effect on a final basis as of 1 May 2000.

NATIONAL ENERGY BOARD

Michel L. Mantha
Secretary

Canada